

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHERON SHELTON,

Civil Action

Plaintiff,

No. 2:22-cv-266-CB

v.

COUNTY OF ALLEGHENY, et al.,

Defendants.

MOTION TO DISMISS

AND NOW COME Defendants, County of Allegheny, Scott Scherer, Stephen Hitchings, Todd Dolfi, Thomas Foley, Estate of Patrick Miller, and James Grill (County Defendants), by and through their counsel Dennis Biondo Jr. and Shelley Rohrer, Assistant Allegheny County Solicitor and submit this Brief in Support of Motion to Dismiss. that the Complaint in its entirety be dismissed as to Defendants Kinavey, Foley, Grill, Hitchings and Scherer and Counts III, IV, V and VI of Plaintiff's complaint be dismissed and states in support thereof the following:

1. Plaintiff filed his Complaint on February 11, 2022. (ECF No. 1).
2. The parties met and conferred on March 29, 2022.
3. Plaintiff filed his First Amended Complaint on May 2, 2022. (ECF No. 6).
4. On June 13, 2022, the Allegheny County District Attorney's Office filed a Motion to Intervene. (ECF No. 7).
5. On June 14, 2022, the Court denied without prejudice the District Attorney's Motion to Intervene and ordered the parties to meet and confer. (ECF No. 9).

6. The parties did meet and confer on June 30, 2022, and Plaintiff filed his Second Amended Complaint on August 30, 2022. (ECF No. 12). This Second Amended Complaint resolved the issues raised by the District Attorney's Office.
7. On September 8, 2022, the County filed an unopposed Motion for Extension to Respond to Second Amended Complaint. (ECF No. 16). The Court granted this motion on September 8, 2022, permitting the County to respond by November 1, 2022. (ECF No. 17).
8. On March 9, 2016, at approximately 10:50PM, five adults and one unborn child were shot and murdered during a cookout in Wilkinsburg, Pennsylvania. (ECF 12 at ¶5).
9. This incident has been referred to as the "Wilkinsburg Massacre."
10. These victims were Brittany Powell, Tina Shelton, Shada Mahone, Chanetta Powell, Ms. Powell's unborn male child, and Jerry Shelton. (ECF 1-003 "Exhibit C" at p.13-14).
11. Three other victims were shot and injured, and one of those victims passed away on September 15, 2020. (ECF 12 at ¶¶5-6).
12. These victims were Lamont Powell, John Ellis, and Tanjia Cunningham. (ECF 1-003 "Exhibit C" at p. 13).
13. Allegheny County Police developed two suspects in the Wilkinsburg Massacre, Cheron Shelton and Robert Thomas.
14. Cheron Shelton was charged with five counts of Criminal Homicide, Criminal Homicide of an Unborn Child, Conspiracy – Criminal Homicide, three counts of Aggravated Assault, three counts of Aggravated Assault with a Deadly Weapon, and

six counts of Recklessly Endangering Another Person on June 23, 2016. (ECF 1-003 “Exhibit C” at pp.7-10).¹

15. Robert Thomas was charged with five counts of Criminal Homicide, Criminal Homicide of an Unborn Child, Conspiracy – Criminal Homicide, three counts of Aggravated Assault, three counts of Aggravated Assault with a Deadly Weapon, and six counts of Recklessly Endangering Another Person on June 23, 2016. (ECF 1-003 (Robert Thomas), “Exhibit C” at pp.6-9).

16. A preliminary hearing for Charon Shelton and Robert Thomas occurred on July 29, 2016. (ECF 12 at ¶184).

17. On February 3, 2020, the Honorable Edward J. Borkowski dismissed the case against Robert Thomas. (ECF 12 at ¶212).

18. The criminal jury trial against Cheron Shelton took place from February 3-February 14, 2020. Cheron Shelton was found not guilty on all counts. (ECF 12 at ¶214).

19. Plaintiff has not sufficiently plead a §1983 Civil Rights Conspiracy.

20. Plaintiff fails to state a claim against individual defendants Kinavey, Foley, Hitchings and Grill.

21. Plaintiff fails to state a claim against Scott Scherer and Supervisor Defendants.

22. Plaintiff Fails to State a Claim Against Defendant County of Allegheny.

23. Defendant Todd Dolfi is Immune from the State Law Malicious Prosecution claim.

¹ The facts of the investigation are further set forth in the Brief in Support of Motion.

WHEREFORE, these Defendants request the Complaint in its entirety be dismissed as to Defendants Kinavey, Foley, Hitchings, Grill, and Scherer and Counts III, IV, V and VI of Plaintiff's complaint be dismissed with prejudice.

Respectfully submitted,

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/s/ Dennis Biondo Jr.
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing MOTION TO DISMISS and PROPOSED ORDER were served by electronic filing upon the following:

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/s/ Dennis Biondo, Jr.
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Dated: October 31, 2022